



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R01-OAR-2021-0265; FRL-10024-16-Region 1]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Massachusetts; 111(d)/129 Revised State Plan for Large Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the Clean Air Act State Plan revisions for Large Municipal Waste Combustors (MWC) submitted by the Massachusetts Department of Environmental Protection (MassDEP) on December 18, 2018. The revised State Plan is in response to amended emission guidelines (EGs) for Large MWCs promulgated on May 10, 2006. MassDEP's State Plan is for implementing and enforcing provisions at least as protective as the EGs applicable to existing Large MWC. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2021-0265 at <https://www.regulations.gov>, or via email to wong.shutsu@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written

comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square – Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

FOR FURTHER INFORMATION CONTACT: Shutsu Wong, Air Quality Branch, U.S.

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SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Table of Contents

I. What Is a State Plan?

II. Why Does EPA Need to Approve State Plans?

III. Why Does EPA Regulate Air Emissions from MWCs?

IV. What History Does MassDEP Have with MWC State Plans?

V. Why Did MassDEP Revise the MWC State Plan?

VI. What Revisions Have Been Made to the State Plan?

- A. Inventory of Sources
- B. Emissions Limits
- C. Operating Practices
- D. Compliance and Performance Testing
- E. Training and Certification
- F. Reporting and Recordkeeping

VII. Why Is EPA Proposing to Approve MassDEP's Revised State Plan?

VIII. Proposed Action

IX. Incorporation by Reference

X. Statutory and Executive Order Reviews

I. What Is a State Plan?

Section 111(d) of the Clean Air Act (CAA) requires pollutants controlled under new source performance standards (NSPS) also be controlled at existing sources in the same source category. Once an NSPS is issued, EPA then publishes emission guidelines (EGs) applicable to the control of the same pollutant for existing (designated) facilities. States with designated facilities must develop state plans to adopt the EGs into their body of regulations. States must also include in their state plans other elements, such as legal authority, inventories, and public participation documentation to demonstrate their ability to enforce the state plans.

II. Why Does EPA Need to Approve State Plans?

Section 129(b)(2) of the CAA requires states to submit state plans to EPA for approval. Each state must show that its state plan will carry out and enforce the EGs. State plans must be at least as

protective as the EGs and will become federally enforceable upon EPA's approval. The procedures for adopting and submitting state plans are in 40 CFR part 60, subpart B.

III. Why Does EPA Regulate Air Emissions from MWCs?

EPA is required to regulate air emissions from MWCs under sections 111(d) and 129 of the Clean Air Act. When burned, municipal solid wastes emit various air pollutants, including hydrochloric acid, dioxin/furan, toxic metals (lead, cadmium, and mercury) and particulate matter. Mercury is highly hazardous and is of particular concern because it persists in the environment and bioaccumulates through the food web. Serious human health effects, primarily to the nervous system, have been associated with exposures to mercury. Harmful effects in wildlife have also been reported; these include nervous system damage and behavioral and reproductive deficits. Human and wildlife exposure to mercury occur mainly through eating of fish. When inhaled, mercury vapor attacks the lung tissue and is a cumulative poison. Short-term exposure to mercury in certain forms can cause hallucinations and impair consciousness. Long-term exposure to mercury in certain forms can affect the central nervous system and cause kidney damage.

Exposure to particulate matter can aggravate existing respiratory and cardiovascular disease and increase risk of premature death. Hydrochloric acid is a clear colorless gas. Chronic exposure to hydrochloric acid has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization. Acute exposure to high levels of chlorine in humans may result in chest pain, vomiting, toxic pneumonitis, pulmonary edema, and death. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs.

Exposure to dioxin and furan can cause skin disorders, cancer, and reproductive effects such as endometriosis. These pollutants can also affect the immune system.

IV. What History Does MassDEP Have with MWC State Plans?

On January 11, 1999, MassDEP submitted a section 111(d)/129 State Plan for implementing and enforcing EGs for existing Large Municipal Waste Combustors (MWCs) pursuant to 40 CFR part 60, subpart Cb. On November 16, 2001, MassDEP submitted minor revisions for inclusion in its MWC State Plan. EPA approved that State Plan on October 9, 2002 (67 FR 62896).

V. Why Did MassDEP Revise the MWC State Plan?

Section 129(a)(5) of the CAA requires EPA to conduct a 5-year review of NSPS and EGs for solid waste incinerators and to amend standards and requirements as appropriate. Accordingly, EPA promulgated amended standards and requirements for Large MWCs on May 10, 2006 (71 FR 27324). This rulemaking included revised limits for dioxin/furan (only for units equipped with electrostatic precipitators), mercury, cadmium, lead, particulate matter, and nitrogen oxides (for some types of units). It also contained revisions to the compliance testing provisions to require increased data availability from continuous emissions monitoring systems (CEMS). CEMS are required to generate at least ninety-five percent (95%) data availability on a calendar year basis and at least ninety percent (90%) data availability on a calendar quarter basis. The compliance testing provisions have also been revised to allow the optional use of CEMS to monitor particulate matter and mercury. Other revisions include:

- Operator stand-in provisions to clarify how long a shift supervisor is allowed to be off site when a provisionally certified control room operator is standing in;
- An eight-hour block average for measuring activated carbon injection rate;
- A provision for waiver of operating parameter limits during the mercury performance test and for two weeks preceding the test, as is already allowed for dioxin testing;
- A revision to relative accuracy criteria for sulfur dioxide and carbon monoxide CEMS;
- Flexibility to the annual compliance testing schedule so that a facility tests once per calendar year, but no less than nine months and no more than 15 months since the previous test;

- Allowing use of parametric monitoring limits from an exceptionally well-operated MWC unit to be applied to all identical units at the same plant site without retesting for dioxin;
- The option of monitoring the activated carbon injection pressure or equivalent parameter; and
- Clarifying the exclusion of monitoring data from compliance calculations.

In response to the amended EGs, MassDEP revised the Code of Massachusetts Regulations (CMR), specifically at 310 CMR 7.08(2) entitled “Municipal Waste Combustors,” effective March 9, 2018, and submitted the revised State Plan to EPA on December 18, 2018.¹ The submittal only addresses those portions of the State Plan that have been updated since EPA’s October 9, 2002 approval.²

VI. What Revisions Have Been Made to the State Plan?

MassDEP revised the State Plan to incorporate changes to the state inventory of sources and to amend the state regulations that serve as the State Plan’s enforceable mechanism. MassDEP revised the state MWC regulations at 310 CMR 7.08(2) and submitted the revised State Plan to EPA on December 18, 2018. Revisions to the MWC regulations address the list of sources, emissions standards, operating practices, compliance and performance testing, operator training and certification, and reporting and recordkeeping requirements.

A. Inventory of Sources

¹ MassDEP’s State Plan package included other amendments that were submitted for approval under the state’s Clean Air Act section 110 State Implementation Plan. For instance, on October 15, 2020, EPA approved revisions to the Massachusetts State Implementation Plan which set reasonable achievable control technology standards for NOx emissions at municipal waste combustors. See 85 FR 65236. In this action, EPA is only taking action on the revisions relevant to the Clean Air Act sections 111(d)/129 State Plan revisions.

² The site assignment provisions of 310 CMR 7.08(2)(a), the definition of “materials separation plan” at 310 CMR 7.08(2)(c), and the materials separation plan provisions at 310 CMR 7.08(2)(f)8 were excluded in earlier State Plan approvals and continue to be excluded in this revision. MassDEP provided a letter clarifying this exclusion on March 19, 2021.

MassDEP removed the closed Fall River MWC from the list of existing Massachusetts MWC facilities subject to the MWC State Plan. The facility ceased operation in June 1999.

B. Emission Limits

The emission limits for particulate matter, cadmium, lead, and dioxin/furan with electrostatic precipitator at 310 CMR 7.08(2)(f)2. are revised to be consistent with EPA's May 2006 EGs for Large MWCs at 40 CFR 60.33b. The annual Massachusetts mercury emission limit is already more stringent than the federal EGs and therefore is not revised. The carbon monoxide emission limit for Mass Burn Refractory MWCs is removed from Table 1 at 310 CMR 7.08(2)(f)2. to reflect the municipal waste combustor technology that is employed at existing large MWCs in Massachusetts. The nitrogen oxides emission limits in 7.08(2)(f)3. are revised to be more stringent than the federal EGs as of March 10, 2020. The nitrogen oxide emission limits for facilities electing to implement a nitrogen oxides emissions averaging plan for multiple units located at the same municipal waste combustor plant, at 7.08(2)(f)4. are revised to be more stringent than the federal EGs.

C. Operating Practices

Operating practices under 310 CMR 7.08(2)(f)1.b. are revised to be consistent with 40 CFR 60.58b(m)(2)(i) to clarify requirements for combustor load and particulate matter control device operating parameters preceding and during quarterly or nine-month mercury compliance testing, and to clarify requirements for average carbon feed rate limits during mercury and dioxin/furan testing.³

D. Compliance and Performance Testing

³ Section 60.38b(a) of subpart Cb incorporates the performance testing methods listed in 40 CFR part 60, subpart Eb, section 60.58b, as minimum state plan requirements for existing sources.

Provisions of 40 CFR 60.58b, “Compliance and Performance Testing,” are incorporated by reference into 310 CMR 7.08(2)(g). In addition, references are revised to reflect the latest EGs amendment date of May 10, 2006.

Procedures for measurement and calculation of the eight-hour block average carbon (or equivalent) usage rate in 310 CMR 7.08(2)(g)1.d. and (h)4.e. are revised, and 310 CMR 7.08(2)(g)3.d. is added for municipal waste combustor units where carbon injection (or its equivalent) is used to comply with the dioxin/furan and mercury emission limits, as required in 40 CFR 60.58b(m) and (d)(2)(xi). Provisions are incorporated from the EGs at 40 CFR 60.58b(g)(10) and (d)(4) for elective use of continuous automated sampling or emissions monitoring for dioxin/furan and mercury emissions, at 310 CMR 7.08(2)(g)1.e. and 2. Provisions from the EGs at 40 CFR 60.58b(c)(10), (d)(3) and (f)(8) are also incorporated for the elective use of continuous emissions monitoring of particulate matter, cadmium, lead and hydrogen chloride at 310 CMR 7.08(2)(g)7., 8., and 9. Provisions at 310 CMR 7.08(2)(g)5.a. are deleted as unnecessary due to the revised more stringent EPA emissions data capture requirements in the amended EGs. The limited waiver from the mercury emission limit at 310 CMR 7.08(2)(g)4 is deleted from the State Plan because the time by which an MWC could have applied for a limited waiver has passed, and the provision is no longer applicable. Requirements in 310 CMR 7.08(2)(j)1. and 6. for emission control plan submissions are updated with new submission deadlines and requirements, including new or amended applicable requirements of the revised State Plan. The schedule for compliance in 310 CMR 7.08(2)(k) is updated with new dates based on promulgation of the State Plan on March 9, 2018.

E. Training and Certification

Operator training and certification requirements in 310 CMR 7.08(2)(f)6.b., (h)11., (i)1., and (i)1.h. are revised to incorporate requirements in EPA’s May 2006 EG revisions at 40 CFR

60.54b(c)(2).⁴ Revisions address the specific requirements associated with occasions when control room operators provisionally certified under the American Society of Mechanical Engineers WRO-1 Standard for the Qualification and Certification of Resource Recovery Facility Operators may perform duties ordinarily restricted to QRO certified operators and shift supervisors.

F. Reporting and Recordkeeping

Recordkeeping and reporting requirements at 310 CMR 7.08(2)(h) and (i) are amended to incorporate the requirements of EPA's May 2006 EGs at 40 CFR 60.59b(d), (g) and (h) by reference.⁵ Revised requirements cover average emissions concentrations, highest levels records, exceedances, instances of insufficient data, excluded data, test results, accuracy determinations, sampling systems quality evaluations, details of when a certified operator is temporarily off site, and optional use of continuous monitoring and continuous automated sampling.

VII. Why is EPA Proposing to Approve MassDEP's Revised State Plan?

EPA has evaluated the MWC State Plan submitted by MassDEP for consistency with the Act, the May 2006 EGs, and EPA guidelines and policy. EPA has determined that MassDEP's State Plan that was submitted on December 18, 2018 meets all requirements and, therefore, EPA is proposing to approve MassDEP's Plan to implement and enforce the EGs, as they apply to existing Large MWCs.

EPA's proposal to approve MassDEP's State Plan is based on our findings that:

(1) MassDEP provided adequate public notice of public hearings for the proposed rule-making, which allows Massachusetts to carry out and enforce provisions that are at least as protective as the EGs for Large MWCs, and

⁴ Section 60.39b(c)(4) of subpart Cb incorporates the operator training and certification requirements of 40 CFR part 60, subpart Eb, section 60.54b as minimum state plan requirements for existing sources.

⁵ Section 60.39b(a) of subpart Cb incorporates the reporting and recordkeeping provisions listed in 40 CFR part 60, subpart Eb, section 60.59b, as minimum state plan requirements for existing sources (except for the siting requirements under sections 60.59b(a), (b)(5), and (d)(11)).

(2) MassDEP demonstrated its legal authority to: adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require record keeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

VIII. Proposed Action

EPA is proposing to approve the MassDEP's revised State Plan for existing Large MWCs. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

IX. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the provisions of 310 CMR 7.08(2), entitled "Municipal Waste Combustors," effective March 9, 2018, excluding the site assignment provisions of 310 CMR 7.08(2)(a), the definition of "materials separation plan" at 310 CMR 7.08(2)(c), and the materials separation plan provisions at 310 CMR 7.08(2)(f)8. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

X. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a State Plan submittal that complies with the provisions of the Act and applicable Federal regulations. Clean Air Act sections 111(d) and 129(b); 40 CFR part 60, subparts B and Cb; and 40 CFR part 62, subpart A; and 40 CFR 62.04. Thus, in reviewing state plan submissions, EPA's role is to approve state choices, provided they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the State Plan is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Administrative practice and procedure, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides, Waste treatment and disposal.

Dated: May 13, 2021.

Deborah Szaro,
Acting Regional Administrator,
EPA Region 1.

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